WP(C) 566/2002
BEFORE
HON'BLE MR. JUSTICE RANJAN GOGOI

An award dated 18.7.2001 passed by the learned Labour Court, Dibrugarh in Reference Case No. 5/95 has been put to challenge in the present writ petition by the Union representing the workmen i.e. Assam Chah Karmachari Sangha.

2. At the outset the questions referred for adjudication to the learned Labour Court by the State Government under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), may be noticed :-

1. Whether the Managements of the Mankhowa Tea Estate and Sookerating Tea Estae were justified in refusing to arrive at a fresh settlement over staff member's retirement scheme to replace the terms of conciliation settlement dt. 6.10.70 in the matter after termination of the aforesaid settlement dt. 6.10.70 by the Management or not ?
2.(a) If not, to what relief, in the form of retirement benefits, the workmen are entitled to ?
(b) What should be provisions of retirement scheme for the staff members employed in these two Tea Estates, which will replace the settlement dt. 6.10.70 in the matter ? .

3. On receipt of the aforesaid reference, Reference Case No. 5/95 was registered and notices were issued to the workmen as well as the Management of the Tea Estates in question. Both sides filed their respective written statements before the learned Labour Court. The case projected by the Sangha, representing the workmen, in brief is that after protracted negotiations a conciliation settlement with regard to the gratuity and pension payable to the retired employees was arrived at by and between the Sangha and the Management. The said conciliation settlement was signed on 6.10.70 and was to be effective from 1.4.70. According to the workmen's Union, inspite of the conciliation settlement arrived at, the terms thereof were not given effect to by the Management of the Tea Estates in question who, on 13.12.70, gave notice of cancellation of the aforesaid settlement. As according to the Union, the conciliation settlement was to remain in force till it was substituted, and as yet the Management was not giving effect to the same, a conciliation proceeding was held, on conclusion of which, a report dated 23.11.72 (Exhibit-4) was drawn up recording the failure to arrive at any settlement. However, no reference of the industrial dispute was made by the State Government in exercise of powers under Section 10 of the Act and the matter remained in a state of more or less animated suspension. In the year 1989 following the retirement of some persons the same dispute once again cropped up as the Management was bent upon in not acting in terms of the conciliation agreement dated 6.10.70. Once again a conciliation proceeding was held and a report of the said proceeding was drawn up on 24.8.93 (Exhibit-3). As the said conciliation proceeding had also ended in failure, on submission of a report of such failure, the State Government by notification dated 1.3.95 referred the above noted two questions for adjudication by the learned Labour Court.

4. The Management in the written statement filed contended that after the conciliation settlement dated 6.10.70 was drawn up and executed by the parties concerned, an industry-wise settlement was arrived at between the Assam Tea Planters' Association, Bharatiaya Chah Parishad and the Assam Chaha Karmachari Sangha on 18.11.70 which was to be effective from 1.11.70. Thereafter, on 13.12.70 the Management gave notice of its intention to cancel the conciliation settlement dated 6.10.70. The Management, in the written statement filed, had further stated that after failure of the conciliation proceeding held in the year 1972-73, the matter remained at that and there was no demand on the part of the workm

en for a fresh settlement. It was only in the year 1989 i.e. after a lapse of 25 years that the demand for the benefits under the conciliation settlement dated 6.10.70 was once again raised resulting in another consequential conciliation proceeding which also failed. According to the Management, gratuity to the retiring workmen was payable in accordance with the provisions of the Payment of Gratuity Act, 1972 which had come into force in the meantime and pension was also paid to the retiring persons as per their entitlement. Consequently, the Management urged, in the written statement filed, that the workmen were entitled to no further benefits. In the written statement filed, the Management had specifically raised the question that at no point of time there was any demand for any fresh settlement in place of the conciliation settlement dated 6.10.70. Rather, the insistence of the workmen, all along, had been for implementation of the said earlier settlement i.e. the settlement dated 6.10.70.

5. The records in original requisitioned by the Court from the office of the learned Labour Court have been duly perused. I have heard Ms. A Bhattacharyya, learned counsel for the petitioner; Mr GN Sahewalla, learned counsel for the respondent No.1 and Mr S Kejriwal, learned counsel for the respondent No. 2.

6. The case pleaded by the workmen in both rounds of conciliation as evident from the records in original, clearly appears to be for implementation of the terms of the conciliation agreement of 1970. A reading of the written statement filed on behalf of the workmen before the learned Labour Court as well as the pleadings contained in the writ petition and the arguments advanced are also to the same effect. In this regard, the Court must take note of the questions referred for adjudication by the learned Labour Court. The first question referred for adjudication is the justifiability of the action of the Management in refusing to arrive at a fresh settlement in place of the conciliation settlement dated 6.10.70. The question of implementation of the conciliation settlement of 1990, therefore, had not been referred for adjudication by the learned Labour Court. Much argument has been advanced by the learned counsel for the petitioner, relying on the ratio laid down by the Apex Court in several cases, that the conciliation settlement dated 6.10.70 must be understood by the Court to be still holding the field as the same has not been substituted by any other fresh settlement. Notwithstanding the arguments made by the learned counsel for the petitioner on the aforesaid score, no declaration could have been given by the learned Labour Court and, therefore, none by this Court also, with regard to the implementation of the conciliation settlement of 1970. The question referred, as already noticed, proceeds on the basis that the conciliation settlement dated 6.10.70 had come to an end and what was required to be answered by the learned Labour Court is the justifiability of the Management’s action in refusing to come to a fresh settlement in place of the aforesaid earlier settlement.

7. The power and jurisdiction of the Labour Court, or for that matter any other industrial forum, while hearing a reference is severely circumscribed by the terms of the reference or any such question that may coincidentally arise from what has been referred. A mere reading of the first question abundantly discloses that the question of implementation of the conciliation settlement of 1970 was not referred to the learned Labour Court; neither the said question can be said to be reasonably arising from the first question referred. This Court, therefore, is of the view that the aforesaid question of implementation of the conciliation agreement of 1970 could not have been gone into by the learned Labour Court. Dealing with the question referred to it, the finding of the learned Labour Court is to the effect that the evidence and the materials on record do not disclose that the workmen had made any demand for substitution of the settlement of 1970 by a fresh settlement. Rather, the demand raised is for implementation of the settlement of 1970. The said finding being essentially on a question of fact required to be dealt with on the basis of the evidence on record, and no evidence to the above effect i.e. that any such demand was raised for a fresh set

tlement, having been laid, the Court is of the view that the learned Labour Court was justified in arriving at its conclusion under question No.1.

Coming to the second question referred, what this Court finds is that not only the said question is consequential to an affirmative answer being given to the first question, the learned Labour Court has also recorded that no material or evidence on the said score had been adduced by the workmen to show what should be the ideal and reasonable quantum of pension and gratuity that would be payable to them. If no evidence on the aforesaid score had been adduced by the workmen, which fact is evident from a mere perusal of the evidence on record, the finding recorded by the learned Labour Court on the second question also cannot be faulted with.

8. For the aforesaid reasons, I find no merit in this writ petition. The writ petition is consequently dismissed, however, without imposing any cost.